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<p style="text-align: right;">Page 1</p> <p>UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK</p> <p style="text-align: center;">-----X</p> <p>JHON E. CARDENAS, CESAR A. ROMERO, and JOSE DAVID PEREZ MEJIA, on behalf of Themselves and others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-against-</p> <p>EDITA'S BAR & RESTAURANT, INC. d/b/a FLAMINGO RESTAURANT AND LOUNGE, DOLL'S REST INC. d/b/a DOLL'S and EDITH F. VALDIVIA a/k/a EDITH F. D'ANGELO, Defendants.</p> <p style="text-align: center;">-----X</p> <p>EXAMINATION BEFORE TRIAL of the Defendant, EDITH D'ANGELO taken by the Plaintiffs, pursuant to Court Order, held at the offices of Rose Law Group, PLLC, 31-09 Newtown Avenue, Suite 309, Astoria, New York 11102, on February 4, 2020, at 10:15 a.m., before a Notary Public of the State of New York.</p>	<p style="text-align: right;">Page 3</p> <p>1 2 STIPULATIONS: 3 IT IS STIPULATED AND AGREED by and between the attorneys for the respective parties herein, and in 4 compliance with Rule 221 of the Uniform Rules for the Trial Courts: 5 6 THAT the parties recognize the provision of Rule 3115 subdivisions (b), (c) and/or (d). All 7 objections made at a deposition shall be noted by the officer before whom the deposition is taken, and 8 the answer shall be given and the deposition shall proceed subject to the objections and to the right of a person to apply for appropriate relief pursuant 9 to Article 31 of the CPLR; 10 THAT every objection raised during a deposition shall be stated succinctly and framed so as not to 11 suggest an answer to the deponent and, at the request of the questioning attorney, shall include a 12 clear statement as to any defect in form or other basis of error or irregularity. Except to the extent 13 permitted by CPLR Rule 3115 or by this rule, during the course of the examination persons in attendance 14 shall not make statements or comments that interfere with the questioning. 15 16 THAT a deponent shall answer all questions at a deposition, except (i) to preserve a privilege or 17 right of confidentiality, (ii) to enforce a limitation set forth in an order of a court, or 18 (iii) when the question is plainly improper and would, if answered, cause significant prejudice to 19 any person. An attorney shall not direct a deponent not to answer except as provided in CPLR Rule 3115 20 or this subdivision. Any refusal to answer or direction not to answer shall be accompanied by a succinct and clear statement on the basis therefore. 21 If the deponent does not answer a question, the examining party shall have the right to complete the 22 remainder of the deposition. 23 THAT an attorney shall not interrupt the deposition for the purpose of communicating 24 25 with the deponent unless all parties consent or the communication is made for the purpose of determining</p>
<p style="text-align: right;">Page 2</p> <p>1 2 A P P E A R A N C E S: 3 ROSE LAW GROUP, PLLC Attorneys for Plaintiffs 4 31-09 Newtown Avenue, Suite 309 Astoria, New York 11102 5 6 BY: JESSE ROSE, ESQ. 7 8 EMILIANO PEREZ ATTORNEY AT LAW Attorneys for Plaintiffs 9 37-28 75th Street, Suite 1D Jackson Heights, New York 11372 10 11 RICOTTA & MARKS, P.C. Attorneys for Defendants 12 31-10 37th Avenue, Suite 401 Long Island City, New York 11101 13 14 BY: MATTHEW MARKS, ESQ. 15 16 ALSO PRESENT: 17 18 ROY ALBERTI, SPANISH INTERPRETER, EIBER TRANSLATIONS 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 2 whether the question should not be answered on the 3 grounds set forth in Section 221.2 of these rules, and, in such event, the reason for the communication 4 shall be stated for the record succinctly and clearly. 5 THAT the failure to object to any question or to move to strike any testimony at this examination 6 shall not be a bar or waiver to make such objection or motion at the time of the trial of this action, 7 and is hereby reserved; and 8 THAT this examination may be signed and sworn to by 9 the witness examined herein before any Notary Public, but the failure to do so or to return the 10 original of the examination to the attorney on whose behalf the examination is taken, shall not be deemed 11 a waiver of the rights provided by Rule 3116 and 3117 of the CPLR, and shall be controlled thereby; 12 and 13 THAT the certification and filing of the original of this examination are hereby waived; and 14 THAT the questioning attorney shall provide counsel for the witness examined herein with a copy of this 15 examination at no charge. 16 17 18 19 20 21 22 23 24 25</p>

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<p>1 2 ROY ALBERTI, called as the interpreter in 3 this matter, was duly sworn by a Notary Public of 4 the State of New York to accurately and faithfully 5 translate the questions propounded to the witness 6 from English into Spanish and the answers given by 7 the witness from Spanish into English. 8 -oOo- 9 EDITH D'ANGELO, the witness herein, 10 having been first duly sworn by a Notary Public of 11 the State of New York, was examined and testified 12 through the interpreter as follows: 13 EXAMINATION BY 14 MR. ROSE: 15 Q. State your name for the record, please. 16 A. Edith D'Angelo. 17 Q. State your address for the record, please. 18 A. 14 Garfield Place, Roslyn Heights, New York 19 11577. 20 Q. Good morning. 21 A. Good morning. 22 Q. If you recall, we had a deposition a couple 23 months ago. 24 A. Yes. 25 Q. Do you remember all of the same rules that</p>	<p>1 E. D'ANGELO 2 Q. And you had told me that there was an 3 accountant who instructed you on how to pay them and 4 how much to pay them; do you remember that? 5 A. No, I didn't say that. 6 Q. What did you say then? 7 A. You asked if I knew about raises. How did I 8 know? So I told them I would find out by watching 9 television because the government never sends me 10 anything and on certain occasions I asked -- not the 11 lawyer, the accountant. 12 Q. And we asked you to identify after that 13 deposition which accountant was telling you. 14 A. The accountants that I've had. 15 Q. Then your lawyer told me last week that you 16 did not actually receive that information from an 17 accountant; is that still true? 18 A. What I told my lawyer is that I have nothing 19 written, nothing was ever sent to me. Sometimes 20 talking. 21 Q. Which accountants? 22 A. Whichever one I had. 23 Q. We asked you to identify which one you had 24 that told you that information and we were told that 25 you would know.</p>
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<p>1 E. D'ANGELO 2 we used then as far as how I'm going to ask 3 questions and the interpreter will be speaking to 4 you directly? 5 A. Yes. 6 Q. And that you have to give verbal responses, 7 something that can be transcribed, so later on you 8 know exactly what you meant to say. 9 A. Yes. 10 Q. And that you should be responding to what 11 the interpreter says and not what I say. 12 A. Yes. 13 Q. Is there any reason you cannot testify 14 truthfully today? 15 A. No. 16 Q. Are you on any medication that will affect 17 your memory? 18 A. No. 19 Q. Have you taken any narcotics or alcohol in 20 the last 24 hours? 21 A. No. 22 Q. Ms. D'Angelo, if you recall the last time 23 you were here, we talked about the reasons that you 24 paid employees the rate that you paid them. 25 A. Yes.</p>	<p>1 E. D'ANGELO 2 A. What information? What year? 3 Q. All of the information you got for any year 4 you got it. 5 A. The last one I had asked last year in 6 January how much is supposed to be paid. I asked 7 over the telephone and he told me a certain amount. 8 Q. Who was that person? 9 A. Mr. Fibos. 10 Q. Do you have contact information for Mr. 11 Fibos? 12 A. I don't understand. 13 Q. You don't know what contact information is? 14 A. I don't understand. 15 Q. How do you contact Mr. Fibos? 16 A. I call him. 17 Q. What's his telephone phone number? 18 A. I sent the number. 19 MR. ROSE: Let's take a quick break. 20 (Whereupon, a recess was taken at 21 this time.) 22 Q. Mr. Fibos is currently your accountant? 23 A. Yes. 24 Q. For how long has he been your accountant? 25 A. Like three years.</p>

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<p>1 E. D'ANGELO</p> <p>2 Q. Is he the accountant for both Doll's and</p> <p>3 Flamingo?</p> <p>4 A. Yes.</p> <p>5 Q. For the last three years?</p> <p>6 A. Yes.</p> <p>7 Q. And you called Mr. Fibos last year to ask</p> <p>8 how much you are supposed to pay employees?</p> <p>9 A. Yes, to be sure.</p> <p>10 Q. When?</p> <p>11 A. It was December or January, something like</p> <p>12 that.</p> <p>13 Q. So within the last two months?</p> <p>14 A. Not this year.</p> <p>15 Q. Last year?</p> <p>16 A. Yes.</p> <p>17 Q. What about the year before that in 2018?</p> <p>18 A. I testified last time that I look on the</p> <p>19 internet and wanted to know what site it was. I</p> <p>20 would look and I gave it to my lawyer to send to</p> <p>21 him.</p> <p>22 MR. ROSE: Okay. We'll ask you to</p> <p>23 produce whatever information that is.</p> <p>24 MR. MARKS: Okay.</p> <p>25 Q. But my question is in 2018, did you ask your</p>	<p>1 E. D'ANGELO</p> <p>2 A. On the internet?</p> <p>3 Q. Yeah. I'm saying what accountant did you</p> <p>4 speak to about the minimum wage in 2015?</p> <p>5 A. I don't remember.</p> <p>6 Q. Did you speak to an accountant about the</p> <p>7 minimum wage?</p> <p>8 A. I don't remember.</p> <p>9 Q. What about 2014?</p> <p>10 A. I don't remember.</p> <p>11 Q. Are you claiming in this case that an</p> <p>12 accountant told you how much to pay employees and</p> <p>13 that's why you paid them that much?</p> <p>14 A. What I said last time is that I would look</p> <p>15 on the internet for changes. Sometimes you would</p> <p>16 see it on TV, and I also asked my accountant.</p> <p>17 Q. You said that you asked your accountant?</p> <p>18 A. Yes, a few times but not -- I don't remember</p> <p>19 dates.</p> <p>20 Q. But I'm asking you which accountant you</p> <p>21 spoke to?</p> <p>22 A. I had three accountants. One was Mr. Colon,</p> <p>23 I gave him all my information, the address. That</p> <p>24 was the first thing. Peter Colon -- no, Mr. Colon,</p> <p>25 not Peter. The last name was Colon. He had cancer.</p>
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<p>1 E. D'ANGELO</p> <p>2 accountant how much you were supposed to pay your</p> <p>3 employees?</p> <p>4 A. I don't remember, but I don't think so.</p> <p>5 Q. What about 2017?</p> <p>6 A. Like I said, I would look on the internet.</p> <p>7 Q. But my question is, did you ask your</p> <p>8 accountant in 2017?</p> <p>9 A. I don't remember. I don't think so.</p> <p>10 Q. What about 2016?</p> <p>11 A. I can't remember that. I can't remember.</p> <p>12 Q. Who was your accountant in 2016?</p> <p>13 A. In 2016, I don't remember the name, but I</p> <p>14 sent everything to my lawyer.</p> <p>15 Q. Do you remember speaking to an accountant in</p> <p>16 2016 about what the minimum wage was?</p> <p>17 A. I don't remember.</p> <p>18 Q. 2015?</p> <p>19 A. I must have talked, but I don't remember</p> <p>20 exact dates.</p> <p>21 Q. Who did you speak to about it?</p> <p>22 A. Who did I speak to? I almost always see it</p> <p>23 on the internet.</p> <p>24 Q. But you don't speak to someone on the</p> <p>25 internet.</p>	<p>1 E. D'ANGELO</p> <p>2 He was my accountant for many years. I started this</p> <p>3 business in 1983 and he has been my accountant since</p> <p>4 then. He got cancer, so I changed him for a firm</p> <p>5 that provided an accountant for me. His name was</p> <p>6 Walter. I don't remember the last name, but it was</p> <p>7 the firm I would go to but right now, I don't</p> <p>8 remember the firm. The firm went out of business.</p> <p>9 That was an inherited firm. So he went broke, so I</p> <p>10 got Mr. Fibos.</p> <p>11 Q. You got Mr. Fibos in about 2016?</p> <p>12 A. Yes, around '16, 2017.</p> <p>13 Q. When did you go from Mr. Colon to Walter?</p> <p>14 A. It was like in 2013.</p> <p>15 MR. ROSE: We are going to call for</p> <p>16 the full identification of these people and</p> <p>17 we'll follow up in writing.</p> <p>18 MR. MARKS: Follow up in writing.</p> <p>19 Q. You said that you found the internet site</p> <p>20 that you had looked at previously to determine what</p> <p>21 the minimum wage was?</p> <p>22 A. Yes, and those papers were also sent.</p> <p>23 Q. To who?</p> <p>24 A. I gave it to my attorney.</p> <p>25 MR. ROSE: We are going to call for</p>

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<p style="text-align: right;">Page 13</p> <p>1 E. D'ANGELO</p> <p>2 production of this. Can we take a break and</p> <p>3 see if you have these documents?</p> <p>4 MR. MARKS: What documents?</p> <p>5 MR. ROSE: The documents she pulled</p> <p>6 from the internet to see the minimum wage.</p> <p>7 MR. MARKS: I spoke to my partner</p> <p>8 who is handling the case and he advised me</p> <p>9 he is unaware of these documents.</p> <p>10 MR. ROSE: Can we take a break so</p> <p>11 you can talk to your client so we can figure</p> <p>12 out if these documents are somewhere because</p> <p>13 I don't want to have a fourth deposition.</p> <p>14 Off the record.</p> <p>15 (Whereupon, a recess was taken at</p> <p>16 this time.)</p> <p>17 Q. Ms. D'Angelo, the last time we are here we</p> <p>18 spoke at length about the documents that are</p> <p>19 maintained by your office relating to the</p> <p>20 Plaintiff's.</p> <p>21 A. Yes.</p> <p>22 Q. And you had produced a number of new</p> <p>23 documents relating to Mr. Cardenas?</p> <p>24 A. Yes.</p> <p>25 Q. Why were these documents not produced</p>	<p style="text-align: right;">Page 15</p> <p>1 E. D'ANGELO</p> <p>2 business.</p> <p>3 Q. Is there anywhere on here that says that he</p> <p>4 stole from you?</p> <p>5 A. Let me read. No, but that they steal from</p> <p>6 the customer.</p> <p>7 Q. But you don't claim in here that he stole</p> <p>8 from you?</p> <p>9 A. He was stealing. This is overcharging the</p> <p>10 customer.</p> <p>11 THE INTERPRETER: And she said</p> <p>12 something I didn't catch.</p> <p>13 A. He would sell small cups of water to the</p> <p>14 dancers that's robbing me and robbing the customer.</p> <p>15 Q. As part of this lawsuit, you claimed that he</p> <p>16 was just stealing from you, right?</p> <p>17 A. Also the customers.</p> <p>18 Q. But nowhere in this document, which I</p> <p>19 believe is the only disciplinary notice you produced</p> <p>20 in this case, did you say he was stealing from you.</p> <p>21 A. I don't think I have that here.</p> <p>22 MR. ROSE: That's Bates stamped</p> <p>23 2080.</p> <p>24 Q. I'll take that back.</p> <p>25 A. One minute.</p>
<p style="text-align: right;">Page 14</p> <p>1 E. D'ANGELO</p> <p>2 earlier?</p> <p>3 A. The office has a lot of papers.</p> <p>4 Q. Who looked for them the first time?</p> <p>5 A. I did.</p> <p>6 Q. How did you find these the second time but</p> <p>7 not the first time?</p> <p>8 A. There's lot of papers at the office.</p> <p>9 Q. How many federal lawsuits do you have</p> <p>10 pending against you?</p> <p>11 A. None, this one.</p> <p>12 MR. ROSE: Let's mark these.</p> <p>13 (Whereupon, a notice was marked as</p> <p>14 Plaintiff's Exhibit 18 for identification,</p> <p>15 as of this date.)</p> <p>16 (Whereupon, a list of rules was</p> <p>17 marked as Plaintiff's Exhibit 19 for</p> <p>18 identification, as of this date.)</p> <p>19 (Whereupon, an application was</p> <p>20 marked as Plaintiff's Exhibit 20 for</p> <p>21 identification, as of this date.)</p> <p>22 Q. Giving you what's marked as Plaintiff's</p> <p>23 Exhibit 18, can you tell me what this is?</p> <p>24 A. A notice for the employee. All the stuff</p> <p>25 that they do bad and did a lot of bad things with</p>	<p style="text-align: right;">Page 16</p> <p>1 E. D'ANGELO</p> <p>2 Q. No, give it back. I'll give you Plaintiff's'</p> <p>3 Exhibit 19?</p> <p>4 A. Can I see it?</p> <p>5 Q. Yes. These are documents that were produced</p> <p>6 after the last deposition Bates stamped 2089 to</p> <p>7 2102. Can you look at the first page of this</p> <p>8 document and it goes for five pages, can you tell me</p> <p>9 what this is?</p> <p>10 A. They are rules.</p> <p>11 Q. Did you distribute these rules to every</p> <p>12 employee?</p> <p>13 A. With the waiters and barmaids.</p> <p>14 Q. Why is it that we don't have one of these</p> <p>15 for every one of the Plaintiff's?</p> <p>16 A. Yes, they have it.</p> <p>17 Q. Where?</p> <p>18 A. I must have sent them. They all have it.</p> <p>19 Q. Is this a set of rules that was applicable</p> <p>20 to both Doll's and Flamingo's?</p> <p>21 A. Yes.</p> <p>22 Q. You only had one set of rules for both</p> <p>23 restaurants, right?</p> <p>24 A. Yes, the same.</p> <p>25 Q. Did you have them sign two different copies</p>

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<p>1 E. D'ANGELO</p> <p>2 for each restaurant or just one for both?</p> <p>3 A. I had to sign one but sometimes two. Some</p> <p>4 two.</p> <p>5 Q. But Mr. Cardenas, you only him sign one for</p> <p>6 both restaurants, right?</p> <p>7 A. Well, here it doesn't say what company it</p> <p>8 is.</p> <p>9 Q. So that's why I'm asking you and you told me</p> <p>10 that it's for both restaurants, right?</p> <p>11 A. These are the general rules. It's not</p> <p>12 specific.</p> <p>13 Q. Because it's for both, right?</p> <p>14 A. Yes, it's for both but it's not specified</p> <p>15 which one it is.</p> <p>16 Q. Could you look at page 2098?</p> <p>17 A. Which one is that?</p> <p>18 Q. At the bottom, 2098?</p> <p>19 A. This one?</p> <p>20 Q. Yes. Can you tell me what this document is?</p> <p>21 A. The taxes I paid for them.</p> <p>22 Q. You mean the employer's side taxes?</p> <p>23 MR. MARKS: Objection.</p> <p>24 A. I don't understand.</p> <p>25 Q. These are the taxes you are required to pay</p>	<p>1 E. D'ANGELO</p> <p>2 A. That money, they never paid it, they owe.</p> <p>3 Q. They owe you what?</p> <p>4 A. This money. They owe me a 1,107 for the</p> <p>5 year 2016. At Flamingo, they owe me from 2016,</p> <p>6 1,831 and 2015 Doll's owes me -- no, I gave it to</p> <p>7 them. If it's here, then I gave it to them. I gave</p> <p>8 it as a gift.</p> <p>9 Q. Please testify in Spanish.</p> <p>10 A. Here it says I gave it as a gift. See, last</p> <p>11 year?</p> <p>12 Q. I understand you say it's a gift, but this</p> <p>13 money was paid to the government on behalf of the</p> <p>14 employer, right?</p> <p>15 A. I paid for it.</p> <p>16 Q. As their employer?</p> <p>17 A. No, I paid my part as an employer, but I</p> <p>18 also paid for their part.</p> <p>19 Q. Where are the records that show that you</p> <p>20 were supposed to pay the government on their behalf?</p> <p>21 A. On the W2's and they sign because they know</p> <p>22 they owed me.</p> <p>23 Q. And you did all four of these documents on</p> <p>24 the same day, on February 17, 2017?</p> <p>25 A. This doesn't say when they would pay me, so</p>
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<p>1 E. D'ANGELO</p> <p>2 to the government on behalf of employees, right?</p> <p>3 A. No, these are the taxes the employees have</p> <p>4 to pay the government.</p> <p>5 Q. But where is the W2 form that describes</p> <p>6 these payments?</p> <p>7 A. I give them their W2.</p> <p>8 Q. So if we look at the W2 it will say that you</p> <p>9 pay \$397.34 for the year of 2015 on behalf of Mr.</p> <p>10 Cardenas?</p> <p>11 A. Yes.</p> <p>12 Q. And that's all you paid on his behalf to the</p> <p>13 government?</p> <p>14 MR. MARKS: Objection to form.</p> <p>15 A. There's another one here (indicating).</p> <p>16 Q. Why did you pay two?</p> <p>17 A. Ones Flamingo, the other one is Doll's.</p> <p>18 Q. Did you prepare these documents at the same</p> <p>19 time?</p> <p>20 A. No.</p> <p>21 Q. But they are signed on the same day, right?</p> <p>22 A. No, they are not the signed same day.</p> <p>23 Q. Well, the date on them says February 2017?</p> <p>24 A. Yes, they signed it because they owed me.</p> <p>25 Q. They owed you what?</p>	<p>1 E. D'ANGELO</p> <p>2 I decide to give it to them. I also have -- one</p> <p>3 owes me from 2017. I don't know why it's not here,</p> <p>4 but he did sign it, but he owes me.</p> <p>5 Q. Who?</p> <p>6 A. John Cardenas. Only John Cardenas owes me</p> <p>7 right now and Cesar Romero.</p> <p>8 Q. Owes you what?</p> <p>9 A. Money.</p> <p>10 Q. For what?</p> <p>11 A. For taxes they were supposed to pay, but I</p> <p>12 paid for them.</p> <p>13 Q. Where are the records to show what money</p> <p>14 they owe you for taxes?</p> <p>15 A. This is one of them (indicating).</p> <p>16 Q. These documents that we were just looking at</p> <p>17 don't include the calculations on why you are</p> <p>18 claiming these amounts.</p> <p>19 A. If it's signed, it's because they know they</p> <p>20 owe me.</p> <p>21 MR. MARKS: Listen to his question</p> <p>22 and answer his question.</p> <p>23 Q. How did you get to the numbers that are</p> <p>24 described in those documents?</p> <p>25 A. Because of the receipts. Every check says</p>

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<p>1 E. D'ANGELO</p> <p>2 the amount of tax that the employer pays the</p> <p>3 employee. The employee has to pay and add it and I</p> <p>4 do it in front of them and they know that's the</p> <p>5 amount.</p> <p>6 Q. But where do you get the numbers from?</p> <p>7 A. From their checks.</p> <p>8 Q. Is there a system somewhere where you are</p> <p>9 keeping track of how much employees owe you?</p> <p>10 A. At that time, I had a lot of problems, I</p> <p>11 said the last time. They wouldn't fill out the tip</p> <p>12 cards. So in order not to have any problems, I</p> <p>13 would pay them daily. I would make the checks when</p> <p>14 they would give me the cardboard. Their cards that</p> <p>15 you fill up tips with, but if they don't give me</p> <p>16 those boxes, I can't make the check. I'm talking</p> <p>17 about the waiters and barmaids, when they would give</p> <p>18 them to me, I would do it, but I already paid them</p> <p>19 daily their income. I have given you a lot of proof</p> <p>20 that I paid their salary and their complete salary</p> <p>21 without discounting taxes, and then when I do the</p> <p>22 checks, they would see, and I would say "You owe me</p> <p>23 this" and "You owe me that for taxes." They had to</p> <p>24 pay me. They asked with money when you report the</p> <p>25 money the taxes with the W2 they receive money back</p>	<p>1 E. D'ANGELO</p> <p>2 A. This was presented by John Cardenas. It's a</p> <p>3 resignation.</p> <p>4 Q. Does he say why he's resigning?</p> <p>5 A. I'm reading.</p> <p>6 MR. ROSE: You can't read it.</p> <p>7 THE INTERPRETER: Sorry.</p> <p>8 A. I don't understand why he's resigning. It</p> <p>9 says the circumstances with the work environment,</p> <p>10 the administration. Different optics are enough to</p> <p>11 opt for what had manifested. There were times when</p> <p>12 I had support with respect to -- I expressed my</p> <p>13 gratitude. That's what it says.</p> <p>14 Q. Can you turn back to the first page of the</p> <p>15 document. Do you see in the second paragraph where</p> <p>16 it says "Entrada?"</p> <p>17 A. Yes.</p> <p>18 Q. Could you read that sentence for me?</p> <p>19 A. Entering your place of work, it's supposed</p> <p>20 to be five minutes before according to your</p> <p>21 schedule, put the finger in the registration machine</p> <p>22 to punch the time in and out.</p> <p>23 Q. Did the time clock in, clock out system</p> <p>24 always work?</p> <p>25 A. It was installed in 2008 and it broke -- I</p>
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<p>1 E. D'ANGELO</p> <p>2 many times they would wait for that money to can</p> <p>3 sell.</p> <p>4 Q. When you filed your taxes, did you report</p> <p>5 all of the revenue that you actually received from</p> <p>6 the restaurants?</p> <p>7 A. Of course.</p> <p>8 MR. ROSE: Call for the production</p> <p>9 for taxes for all relevant years and follow</p> <p>10 up in writing.</p> <p>11 MR. MARKS: Taken under advisement.</p> <p>12 Q. Were the numbers you had on the taxes</p> <p>13 different than the numbers you had in your</p> <p>14 QuickBooks files?</p> <p>15 A. I don't understand.</p> <p>16 Q. You produced four spreadsheets, four</p> <p>17 documents containing the numbers showing how much</p> <p>18 money everybody made. Are those numbers the same</p> <p>19 numbers that would be reflected in the tax returns</p> <p>20 that you filed?</p> <p>21 A. Of course the accountant asked for that.</p> <p>22 Whatever comes out of the computer, I give to him.</p> <p>23 Q. I'm going to ask you to look at the last</p> <p>24 page of this document. Can you tell me what this</p> <p>25 is?</p>	<p>1 E. D'ANGELO</p> <p>2 think it was 2013 that it broke.</p> <p>3 Q. So this document we are looking at now was</p> <p>4 signed in 2017 according to page 2093. Why does</p> <p>5 this document still tell them to clock in if there's</p> <p>6 no way to clock in?</p> <p>7 A. Because the machine didn't work, there was</p> <p>8 no way to get this out from the machine. We started</p> <p>9 paying daily.</p> <p>10 Q. So you just paid the same amount for the</p> <p>11 shift?</p> <p>12 A. Hourly.</p> <p>13 Q. Who kept track of the hours?</p> <p>14 A. The one in charge that day. He's the</p> <p>15 coordinator. He would see how many hours he would</p> <p>16 work and he would pay according to the hours daily.</p> <p>17 Q. Who kept track of that?</p> <p>18 A. Who kept track of the schedule?</p> <p>19 Q. Who kept track of how many hours everybody</p> <p>20 worked?</p> <p>21 A. It was daily that it was paid. We didn't</p> <p>22 have to track hours. The one in charge would be</p> <p>23 there since the business opened and when they came</p> <p>24 in.</p> <p>25 Q. Did they write that down?</p>

6 (Pages 21 to 24)

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<p>1 E. D'ANGELO</p> <p>2 A. Yeah.</p> <p>3 Q. Where?</p> <p>4 A. Regular paper and at the end, he would put</p> <p>5 it with the receipts -- the receipts I would give</p> <p>6 them. Many of them you have. It says the hour they</p> <p>7 go in and the hour they finished.</p> <p>8 Q. Other than those receipts, is there any</p> <p>9 other record?</p> <p>10 MR. MARKS: Objection.</p> <p>11 A. No. You want me to finish reading this?</p> <p>12 Q. No. If you look at paragraph 3, does this</p> <p>13 say you will pay an extra \$10 if they clean?</p> <p>14 A. Yes. They are always paid 10, but if they</p> <p>15 clean extra Friday, Saturday, Sunday gets dirtier,</p> <p>16 so we give 10 more.</p> <p>17 Q. What do you mean they were always paid 10?</p> <p>18 A. With regards to work, they would get 10,</p> <p>19 aside from their salary.</p> <p>20 Q. You would pay everyone \$10 per what?</p> <p>21 A. To fix the whole area, to sweep, to clean</p> <p>22 the table.</p> <p>23 Q. You are not claiming you paid them \$10 an</p> <p>24 hour?</p> <p>25 A. No. They don't get tips for that hour, so</p>	<p>1 E. D'ANGELO</p> <p>2 document is?</p> <p>3 A. This was an application to work.</p> <p>4 Q. Was this application for Doll's or for</p> <p>5 Flamingo?</p> <p>6 A. The applications are always done in</p> <p>7 Flamingo.</p> <p>8 MR. ROSE: For the record, pages</p> <p>9 2074 and 2075.</p> <p>10 Q. They were done at Flamingo but you used</p> <p>11 these application for both locations, right?</p> <p>12 A. It's not that I used both places. When they</p> <p>13 come to work, I tell them I have another business</p> <p>14 and perhaps they also have to work there one day.</p> <p>15 Q. That's part of the job with Flamingo, right?</p> <p>16 A. Yes.</p> <p>17 MR. MARKS: Before you begin, I just</p> <p>18 want to let you know I do have those</p> <p>19 documents.</p> <p>20 MR. ROSE: Okay. We'll take a</p> <p>21 break.</p> <p>22 MR. MARKS: Briefly for the record,</p> <p>23 I'm going to forward them to you, I'm not</p> <p>24 waiving any attorney/client privilege for</p> <p>25 any documents other than these.</p>
Page 26	Page 28
<p>1 E. D'ANGELO</p> <p>2 they would get 10.</p> <p>3 Q. Is there anything in this document that</p> <p>4 describes that people are going to get paid less per</p> <p>5 hour because they collect tips, either in this</p> <p>6 document from 2089 to 2083 or the next document that</p> <p>7 goes 2084 to 2097?</p> <p>8 A. I'm not understanding.</p> <p>9 THE WITNESS: I'm not understanding</p> <p>10 everything he's saying.</p> <p>11 Q. Is there anything in those two documents</p> <p>12 that tells employees who are tipped that they are</p> <p>13 getting less per hour because they are tipped</p> <p>14 employees?</p> <p>15 A. This is a rule for companies. It doesn't</p> <p>16 say the amount of pay or anything like that.</p> <p>17 Q. Is there any document that you distributed</p> <p>18 to employees that told them they would get less per</p> <p>19 hour if they get tips?</p> <p>20 A. No, people that work for tips get paid less.</p> <p>21 Q. Did you ever tell them in writing anywhere</p> <p>22 what they were going to get paid per hour?</p> <p>23 A. Written down? No.</p> <p>24 Q. I'm going to give you what's been marked as</p> <p>25 Plaintiffs' Exhibit 20. Can you tell me what this</p>	<p>1 E. D'ANGELO</p> <p>2 MR. ROSE: I understand. All right.</p> <p>3 Let's mark these.</p> <p>4 (Whereupon, a spreadsheet was marked</p> <p>5 as Plaintiffs' Exhibit 21 for</p> <p>6 identification, as of this date.)</p> <p>7 (Whereupon, a wage rates document</p> <p>8 was marked as Plaintiffs' Exhibit 22 for</p> <p>9 identification, as of this date.)</p> <p>10 (Whereupon, an employee earning</p> <p>11 summary was marked as Plaintiffs' Exhibit 23</p> <p>12 for identification, as of this date.)</p> <p>13 (Whereupon, an Excel spreadsheet was</p> <p>14 marked as Plaintiffs' Exhibit 24 for</p> <p>15 identification, as of this date.)</p> <p>16 Q. Please take a look at that document and tell</p> <p>17 me if you have ever seen it before?</p> <p>18 A. Not in this format. I imagine my lawyer did</p> <p>19 it.</p> <p>20 Q. I'll represent to you that this was produced</p> <p>21 by your office, then your lawyer produced it to me</p> <p>22 after removing the information that was not relevant</p> <p>23 to the case.</p> <p>24 A. Fine.</p> <p>25 Q. Do you have any idea what this information</p>

7 (Pages 25 to 28)

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<p>1 E. D'ANGELO</p> <p>2 means?</p> <p>3 A. These are the checks.</p> <p>4 Q. This seems to be a summary of how much was</p> <p>5 paid to someone for Alejandro Vargas on the first</p> <p>6 page and then Cesar Romero on the fourth page,</p> <p>7 Christi Tavara; do you see that?</p> <p>8 A. Yes, I'm looking.</p> <p>9 Q. Do you have any idea what all this</p> <p>10 information means?</p> <p>11 A. This was the computer. These are the</p> <p>12 payments.</p> <p>13 Q. Do you see where it says "Rate" and it says</p> <p>14 the regular rate is \$7.50?</p> <p>15 A. Yes.</p> <p>16 Q. Was that the rate Mr. Vargas was paid</p> <p>17 throughout his employment?</p> <p>18 A. I don't know. That depends on the year. I</p> <p>19 don't understand this format.</p> <p>20 Q. I don't either. That's why I'm asking if</p> <p>21 you can explain.</p> <p>22 A. I produced a different format and you wanted</p> <p>23 it like this. I don't understand this.</p> <p>24 Q. You produced four spreadsheets and this is</p> <p>25 one of them. I'm asking if you can explain them.</p>	<p>1 E. D'ANGELO</p> <p>2 A. I can't say it's correct, because I don't</p> <p>3 understand. It says 7.50, but it doesn't have a</p> <p>4 date.</p> <p>5 Q. It says on the left "April 2016." Check</p> <p>6 under the pay period and paycheck date.</p> <p>7 A. I don't understand spreadsheets.</p> <p>8 Q. How long did Mr. Vargas work at your</p> <p>9 restaurants?</p> <p>10 A. I don't remember exactly.</p> <p>11 Q. So the top of this says Edita's Bar and</p> <p>12 Restaurant, Inc.?</p> <p>13 A. Correct.</p> <p>14 Q. Is there another spreadsheet for Doll's or</p> <p>15 is everything included in one?</p> <p>16 A. Every business has its own payment.</p> <p>17 Q. Are you going to produce the Doll's</p> <p>18 spreadsheets?</p> <p>19 A. I gave it to you. I gave you the sheets but</p> <p>20 not a spreadsheet. I gave all the sheets that came</p> <p>21 out of the computer, check by check. It was an</p> <p>22 amount like this, but you wanted it in a spreadsheet</p> <p>23 (indicating).</p> <p>24 MS. ROSE: Off the record.</p> <p>25 (Whereupon, a discussion was held</p>
Page 30	Page 32
<p>1 E. D'ANGELO</p> <p>2 A. Not me. My lawyer got it from the computer.</p> <p>3 Q. I'm going to hand you what's been marked as</p> <p>4 Plaintiffs' Exhibit 22. Do you recognize these</p> <p>5 documents?</p> <p>6 A. I imagine this is from the computer. This</p> <p>7 came from their payments.</p> <p>8 Q. Did you always maintain in the computer what</p> <p>9 hourly rate employees were getting paid?</p> <p>10 A. Yes.</p> <p>11 Q. So these are all the changes that were made</p> <p>12 to their pay over the course of time they worked</p> <p>13 there; is that correct?</p> <p>14 A. If it came out of the computer and it's put</p> <p>15 here, it should be correct.</p> <p>16 Q. Are you aware if the rates that are</p> <p>17 described in this document are the correct rates</p> <p>18 under the law?</p> <p>19 A. I suppose.</p> <p>20 Q. If you look, it says Mr. Vargas was getting</p> <p>21 paid \$5 an hour until April of 2016, is that what</p> <p>22 that indicates?</p> <p>23 A. It says that here (indicating).</p> <p>24 Q. And then he got \$7.50 an hour until the end</p> <p>25 of his employment, right?</p>	<p>1 E. D'ANGELO</p> <p>2 off the record.)</p> <p>3 Q. Ms. D'Angelo, do you know if there's a</p> <p>4 separate record for the hourly rates that employees</p> <p>5 were paid from Doll's as opposed to Flamingo?</p> <p>6 A. I don't understand the question.</p> <p>7 Q. This record that we are looking at,</p> <p>8 Plaintiffs' 22, seems to indicate when the hourly</p> <p>9 rate changed for each employee; is that your</p> <p>10 understanding as well?</p> <p>11 A. Yes.</p> <p>12 Q. Is there any other change in payment that</p> <p>13 any of the plaintiffs received other than what's in</p> <p>14 this document?</p> <p>15 A. The extra payment of \$10 that was given to</p> <p>16 them in cash.</p> <p>17 Q. So if you look at this, for all of the</p> <p>18 plaintiff's who were working in 2016, they all had</p> <p>19 their pay changed from \$5 an hour to 7.50 an hour on</p> <p>20 April 11, 2016. Can you tell me why you made the</p> <p>21 change in April 2016?</p> <p>22 A. Because it changed at that time.</p> <p>23 Q. But after that, you didn't change their rate</p> <p>24 of pay in January of 2017; did you?</p> <p>25 A. It doesn't say 2017.</p>

8 (Pages 29 to 32)

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<p>1 E. D'ANGELO</p> <p>2 Q. These are all the records that you have,</p> <p>3 according to your production, and if you look in the</p> <p>4 upper left, it was printed in January of 2020. So</p> <p>5 can you tell me if you made a change to the rate of</p> <p>6 pay in January 2017?</p> <p>7 A. Yes.</p> <p>8 Q. What did you change?</p> <p>9 A. What it was. I don't remember the year, but</p> <p>10 it always change according to how the raises go.</p> <p>11 Q. Do you have any records that show that you</p> <p>12 paid any of these plaintiffs more than 7.50 an hour</p> <p>13 in 2017?</p> <p>14 A. I sent you a stack of papers like this that</p> <p>15 was each check that was given to them from 2009</p> <p>16 since you asked for it until 2018. All the checks,</p> <p>17 one by one, was printed and you have the copy there.</p> <p>18 It's a stack like this, a big one, like 12</p> <p>19 centimeters, maybe more (indicating).</p> <p>20 Q. Do you think that those records show that</p> <p>21 the plaintiffs were paid more than 7.50 an hour?</p> <p>22 A. When it was raised, they were paid more. It</p> <p>23 was 8-something. I don't remember exactly the</p> <p>24 amount when the next raise.</p> <p>25 Q. But for some reason, it wasn't put into the</p>	<p>1 E. D'ANGELO</p> <p>2 A. Record of what?</p> <p>3 Q. Records relating to the number of hours</p> <p>4 worked and how much employees were paid?</p> <p>5 A. No, those receipts that I give also. It</p> <p>6 says the time they start and the time they end and</p> <p>7 get paid daily.</p> <p>8 Q. Wasn't that information entered into</p> <p>9 QuickBooks?</p> <p>10 A. No, it was when it was with the finger --</p> <p>11 when they would check it with the finger. That's</p> <p>12 when it would it would go to the computer.</p> <p>13 Q. Do you have any records showing when people</p> <p>14 clocked in and clocked out through the fingerprint</p> <p>15 system?</p> <p>16 A. I sent you all that.</p> <p>17 Q. You sent me everything you have, right?</p> <p>18 A. Yes.</p> <p>19 Q. I'm going to give you Plaintiffs' Exhibit</p> <p>20 23. This is called the Employee Earning Summary.</p> <p>21 A. I'm sorry, but I can't see anything here.</p> <p>22 Q. Do you need me to print it in larger font?</p> <p>23 A. Please. I can't see.</p> <p>24 Q. Do you know if the earning summary that was</p> <p>25 produced was for the entire time that they worked</p>
Page 34	Page 36
<p>1 E. D'ANGELO</p> <p>2 QuickBooks?</p> <p>3 A. I see here it's only until 2016. You have</p> <p>4 the papers one by one.</p> <p>5 Q. And you believe that those records are going</p> <p>6 to show that the Plaintiff's were paid more than</p> <p>7 7.50 an hour?</p> <p>8 MR. MARKS: Objection to form.</p> <p>9 A. You have that.</p> <p>10 Q. Are you claiming as part of this lawsuit</p> <p>11 that you provided a notice to employees that they</p> <p>12 were getting paid less than the minimum wage?</p> <p>13 A. What?</p> <p>14 Q. Are you claiming that you provided a notice</p> <p>15 that they would get paid less than the minimum wage</p> <p>16 because they were tipped employees?</p> <p>17 A. Yes.</p> <p>18 Q. Where is that notice?</p> <p>19 A. It was oral.</p> <p>20 Q. When did you tell them?</p> <p>21 A. When they get hired.</p> <p>22 Q. Do you have any records relating to that?</p> <p>23 A. It was oral.</p> <p>24 Q. Is the QuickBooks the only way that you keep</p> <p>25 records?</p>	<p>1 E. D'ANGELO</p> <p>2 there?</p> <p>3 A. I don't understand.</p> <p>4 Q. Have you reviewed the documents that you</p> <p>5 produced in this case?</p> <p>6 A. When I gave you all the stack of checks,</p> <p>7 yes. This? No (indicating).</p> <p>8 Q. So you don't know what this means?</p> <p>9 A. I put the same thing on Excel.</p> <p>10 Q. Who else would be able to testify about what</p> <p>11 these numbers mean?</p> <p>12 A. I don't understand. The lawyer that put</p> <p>13 them like that on Excel.</p> <p>14 Q. Did the lawyer maintain your QuickBooks for</p> <p>15 you?</p> <p>16 A. No, I did.</p> <p>17 Q. So do you understand what these numbers</p> <p>18 mean?</p> <p>19 A. Yes, they are the payments of the employees,</p> <p>20 the money they were paid.</p> <p>21 Q. So do you know if the earning summary that</p> <p>22 you produced was for the whole time they worked</p> <p>23 there or less than the whole time?</p> <p>24 A. That's done yearly.</p> <p>25 Q. But your records show that it was not done</p>

9 (Pages 33 to 36)

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<p>1 E. D'ANGELO</p> <p>2 yearly. I'm giving you Plaintiffs' 24, which is the</p> <p>3 first five pages of a 1,736 page Excel sheet.</p> <p>4 A. I don't understand.</p> <p>5 Q. You produced a spreadsheet that if I printed</p> <p>6 it in its entirety, it would be 1,736 pages in the</p> <p>7 same format that you are looking at now and it shows</p> <p>8 on a weekly basis how much somebody was paid; do you</p> <p>9 see that?</p> <p>10 A. Yes, the checks are weekly.</p> <p>11 Q. Are there any other records, other than what</p> <p>12 you produced for the payroll detail review and the</p> <p>13 hand written notes, that describe how many hours</p> <p>14 people worked?</p> <p>15 A. I don't understand. Tell me again.</p> <p>16 Q. Are you saying that the information was only</p> <p>17 put in QuickBooks once a year?</p> <p>18 A. No.</p> <p>19 Q. How often was it put into QuickBooks?</p> <p>20 A. The payments of the employees?</p> <p>21 Q. Yes.</p> <p>22 A. Every two weeks, every four weeks.</p> <p>23 Q. Do you know when Mr. Vargas stopped working,</p> <p>24 what year?</p> <p>25 A. I don't remember exactly.</p>	<p>1 E. D'ANGELO</p> <p>2 e-mailed to me by your counsel that you claimed were</p> <p>3 the internet sources that told you to change the</p> <p>4 amount to pay your employees; is that correct.</p> <p>5 A. Yes.</p> <p>6 Q. The first two pages are from 2008; is that</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. Where did you maintain these two pages?</p> <p>10 A. They were in the office.</p> <p>11 Q. The next date that we have is December 5,</p> <p>12 2017 to increase on December 31, 2017; do you see</p> <p>13 that?</p> <p>14 A. No.</p> <p>15 Q. The third page of the document. These are</p> <p>16 not Bates stamped.</p> <p>17 A. Yes.</p> <p>18 Q. It's an article that says New York State</p> <p>19 wage will increase in December 31, 2017?</p> <p>20 A. Yes, correct.</p> <p>21 Q. Now, your claim is that you printed this</p> <p>22 when?</p> <p>23 A. It was in the office. I can't remember</p> <p>24 when. I can't remember when it was printed.</p> <p>25 Q. Well, if you look at the upper left, it</p>
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<p>1 E. D'ANGELO</p> <p>2 Q. Was it in the 2017?</p> <p>3 A. The last check was this year. That's how it</p> <p>4 was.</p> <p>5 Q. Do you see where it says "User edit?"</p> <p>6 A. Where is it (indicating)?</p> <p>7 Q. It's one of the headings. Do you know what</p> <p>8 that means?</p> <p>9 A. Users edit?</p> <p>10 Q. Yes.</p> <p>11 A. No.</p> <p>12 MR. ROSE: Off the record.</p> <p>13 (Whereupon, a discussion was held</p> <p>14 off the record.)</p> <p>15 (Whereupon, an article was marked as</p> <p>16 Plaintiffs' Exhibit 25 for identification,</p> <p>17 as of this date.)</p> <p>18 (Whereupon, a labor law document was</p> <p>19 marked as Plaintiffs' Exhibit 26 for</p> <p>20 identification, as of this date.)</p> <p>21 (Whereupon, Cesar Romero's pay</p> <p>22 records was marked as Plaintiffs' Exhibit 27</p> <p>23 for identification, as of this date.)</p> <p>24 Q. I'm handing you what's been marked as</p> <p>25 Plaintiffs' 25. These were the documents that were</p>	<p>1 E. D'ANGELO</p> <p>2 tells you that it was printed on October 7, 2019.</p> <p>3 So is it your still your testimony that you printed</p> <p>4 them and kept them in the office?</p> <p>5 A. Yes.</p> <p>6 Q. When did you print them to keep them in the</p> <p>7 office?</p> <p>8 A. I don't remember.</p> <p>9 Q. Are you claiming that it was around the time</p> <p>10 that it came out in December of 2017?</p> <p>11 A. Yes.</p> <p>12 Q. This is the copy that you printed out in</p> <p>13 December of 2017?</p> <p>14 A. Yes, probably.</p> <p>15 Q. You understand you are under oath being</p> <p>16 sworn to tell the truth, right?</p> <p>17 A. Yes.</p> <p>18 Q. And you are claiming that this is a document</p> <p>19 that you printed in December of 2017?</p> <p>20 A. This sheet was in the office. I didn't say</p> <p>21 I printed it.</p> <p>22 Q. You did say you printed it in or around</p> <p>23 December of 2017?</p> <p>24 A. When you talk about these papers and you ask</p> <p>25 me where I got them from, I said the office.</p>

10 (Pages 37 to 40)

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<p style="text-align: right;">Page 41</p> <p>1 E. D'ANGELO</p> <p>2 Q. So I'm asking did you print these in 2017</p> <p>3 and you found them in your office when you went back</p> <p>4 to look?</p> <p>5 A. No, I found them in the office when you</p> <p>6 asked for them, and I have given them to you. I</p> <p>7 found them in the office I don't know when.</p> <p>8 Q. But where did you find them in the office?</p> <p>9 A. I have a lot of papers in my office. When</p> <p>10 you want it, these papers, so we looked for them.</p> <p>11 Q. And you found them that you had printed</p> <p>12 previously?</p> <p>13 A. If they are in the office, it's because they</p> <p>14 had been printed.</p> <p>15 Q. This isn't something you printed after the</p> <p>16 last deposition to try and create a false impression</p> <p>17 that you did the research?</p> <p>18 MR. MARKS: Objection.</p> <p>19 A. No, you can see this is 2008.</p> <p>20 Q. But we are looking at the third page that</p> <p>21 says "New York State's Minimum Wage tip credits will</p> <p>22 increase effective December 31, 2017" and it is your</p> <p>23 testimony that you found these printed in your</p> <p>24 office prior to the initiation of the lawsuit?</p> <p>25 A. No, you asked for papers from where you</p>	<p style="text-align: right;">Page 43</p> <p>1 E. D'ANGELO</p> <p>2 A. From my office.</p> <p>3 Q. Did you print any of these after the lawsuit</p> <p>4 was started?</p> <p>5 A. I haven't printed them, I found them in my</p> <p>6 office.</p> <p>7 Q. So these were things you used at the time to</p> <p>8 determine how much to pay your employees?</p> <p>9 A. You wanted to know what was the site I would</p> <p>10 go to. That was the question you asked last time.</p> <p>11 You didn't even tell me to produce papers. What</p> <p>12 site I would go to and this is an example that I</p> <p>13 found in the office and I gave to you.</p> <p>14 Q. So these are things you printed previously</p> <p>15 and kept it? Listen to my question and answer my</p> <p>16 question. Are all these documents from the internet</p> <p>17 documents that you had found previously and printed</p> <p>18 and that you went and found after our deposition in</p> <p>19 hard copy?</p> <p>20 MR. MARKS: Objection.</p> <p>21 A. I never print papers from the computer, not</p> <p>22 this.</p> <p>23 Q. Never?</p> <p>24 A. No.</p> <p>25 Q. So who did?</p>
<p style="text-align: right;">Page 42</p> <p>1 E. D'ANGELO</p> <p>2 looked it up the raises on the internet. I told you</p> <p>3 I would look on the internet also. So I looked in</p> <p>4 the office and I found papers.</p> <p>5 Q. That's my question, are all these documents</p> <p>6 papers that you found in the office that you had</p> <p>7 used at the time that you determined how much to pay</p> <p>8 people?</p> <p>9 A. I said there was many ways to determine, not</p> <p>10 just because I would go to the internet. The news.</p> <p>11 I would ask the accountant. I would look at the</p> <p>12 internet and even my children would tell me.</p> <p>13 Q. Well, that's not something you testified</p> <p>14 before. You are saying your children is the reason</p> <p>15 you are changing the minimum wage?</p> <p>16 A. No, I'm saying you want to know how I find</p> <p>17 out amount raises and when I told you there's many</p> <p>18 ways. The government doesn't send me a sheet</p> <p>19 telling me. So one way is through the internet,</p> <p>20 other way is the news, another way is because I</p> <p>21 would ask the accountant.</p> <p>22 Q. So my question is these documents in front</p> <p>23 of you, this was an 18-page attachment that got</p> <p>24 e-mailed to me during the break we just took, where</p> <p>25 did these documents all come from?</p>	<p style="text-align: right;">Page 44</p> <p>1 E. D'ANGELO</p> <p>2 A. I found sheets. I don't know who printed</p> <p>3 them and I brought them. You didn't want paper?</p> <p>4 Q. Ma'am, no.</p> <p>5 A. You wanted to know what sited I would go to.</p> <p>6 Q. I'm asking you because I want to be clear</p> <p>7 what your testimony is. Are these documents that</p> <p>8 you printed from the internet after our last</p> <p>9 deposition?</p> <p>10 MR. MARKS: Objection. You can</p> <p>11 answer.</p> <p>12 Q. It's a yes or no question.</p> <p>13 A. I didn't print anything.</p> <p>14 Q. Are these documents that you found in your</p> <p>15 office?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know when they were printed?</p> <p>18 A. No.</p> <p>19 Q. Do you know if they were printed after the</p> <p>20 lawsuit was started or before?</p> <p>21 A. I have no idea.</p> <p>22 Q. Are these the documents that is your</p> <p>23 testimony that you were relying on when you decided</p> <p>24 how much to pay your employees?</p> <p>25 A. No, I told you I would go to the internet</p>

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<p>1 E. D'ANGELO</p> <p>2 and from the internet, I would see how much I would</p> <p>3 have to pay the employees for restaurants, and it</p> <p>4 would come up. I had no reason to print them.</p> <p>5 Q. How much do you pay your employees now?</p> <p>6 A. Which of the employees?</p> <p>7 Q. The tipped employees, how much do you pay</p> <p>8 them now?</p> <p>9 A. 10.</p> <p>10 Q. If you look at the third page of this, you</p> <p>11 understand that it says large employers are suppose</p> <p>12 to pay \$10.85; do you see that?</p> <p>13 A. Where does it say that? I called my</p> <p>14 accountant, he said it was 10.</p> <p>15 Q. If you look at the page there's an article</p> <p>16 that says "Minimum Wage Increases in New York. What</p> <p>17 employer should know;" do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. This is a 7-page article that you produced.</p> <p>20 Are you claiming that you reviewed this at the time</p> <p>21 it came out and used it as a basis to determine how</p> <p>22 much to pay your employees?</p> <p>23 A. If I saw this, I would see it on the</p> <p>24 internet. I don't read it because I don't</p> <p>25 understand these papers. I found at the business,</p>	<p>1 E. D'ANGELO</p> <p>2 Q. Where are the new ones?</p> <p>3 A. They are at the business and we take</p> <p>4 pictures of this and I would give it to the</p> <p>5 attorney.</p> <p>6 Q. You have produced no pictures from after</p> <p>7 2009.</p> <p>8 A. Yes, we have them.</p> <p>9 Q. We have asked for them multiple times. This</p> <p>10 is the third deposition we have had.</p> <p>11 A. I gave it to my attorney. I don't know what</p> <p>12 happened.</p> <p>13 Q. If you look at Plaintiffs' 25 on the third</p> <p>14 page in the upper left corner all the way through</p> <p>15 the end of that last article we were discussing in</p> <p>16 the upper left corner, it's dated October 7, 2019,</p> <p>17 which is two weeks after your last deposition.</p> <p>18 A. Where?</p> <p>19 Q. Right there (indicating). So were you lying</p> <p>20 before when you just told me you just found these in</p> <p>21 the office?</p> <p>22 MR. MARKS: Objection.</p> <p>23 A. No.</p> <p>24 Q. So how do you explain that these were</p> <p>25 printed in October of 2019, two weeks after your</p>
Page 46	Page 48
<p>1 E. D'ANGELO</p> <p>2 just like this. It's on the wall.</p> <p>3 Q. Please only stick to what we are talking</p> <p>4 about which is the article that says "Minimum Wage</p> <p>5 Increases in New York. What employers should know."</p> <p>6 It's dated April 18, 2016. Are you claiming that</p> <p>7 this is something that you reviewed in determining</p> <p>8 how much to pay employees?</p> <p>9 A. I don't remember.</p> <p>10 Q. But you are also claiming that this was just</p> <p>11 in your office and you had found it after the last</p> <p>12 deposition?</p> <p>13 A. You wanted to know where one gets their</p> <p>14 raises?</p> <p>15 Q. What are the pictures at the end of this?</p> <p>16 A. The notices for the employees.</p> <p>17 Q. Are these the most recent notices that you</p> <p>18 posted?</p> <p>19 A. The most recent ones. The letters are</p> <p>20 small, I can't see.</p> <p>21 Q. The most recent document on here is from</p> <p>22 2009 and it's the last six pages. These pictures of</p> <p>23 your posters, is this the most recent poster you put</p> <p>24 up?</p> <p>25 A. No, these are old.</p>	<p>1 E. D'ANGELO</p> <p>2 last deposition and response to a request for what</p> <p>3 information you used to determine how to pay your</p> <p>4 employees?</p> <p>5 A. Perhaps my husband printed them because he</p> <p>6 knew what I had to look for. I don't know.</p> <p>7 Q. But you didn't actually pay employees what</p> <p>8 you were supposed to pay them; did you? Giving you</p> <p>9 Plaintiffs' 26.</p> <p>10 A. The employees were always paid what the</p> <p>11 government would say.</p> <p>12 Q. Even assuming you were allowed to take a tip</p> <p>13 credit? Do you see where it says "Small employer"</p> <p>14 and "Large employer" under "New York City" on this?</p> <p>15 A. Yes.</p> <p>16 MR. MARKS: Objection. I don't know</p> <p>17 what this document is.</p> <p>18 MR. ROSE: It's part of the labor</p> <p>19 law.</p> <p>20 MR. MARKS: Do you want to represent</p> <p>21 that on the record?</p> <p>22 MR. ROSE: Yes. This is a document</p> <p>23 that's distributed by the Department of</p> <p>24 Labor to describe how much employers are</p> <p>25 supposed to be paid.</p>

12 (Pages 45 to 48)

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<p style="text-align: right;">Page 49</p> <p>1 E. D'ANGELO</p> <p>2 Q. To you see where it says "If you have 11 or</p> <p>3 more employees, the cash tip for employees is 9.15</p> <p>4 per hour or 8.75 per hour for smaller employers</p> <p>5 beginning December 31, 2016." Is it your testimony</p> <p>6 that you paid that amount to your employees?</p> <p>7 MR. MARKS: Objection. Which</p> <p>8 amount? You just said large and small.</p> <p>9 MR. ROSE: Either.</p> <p>10 Q. Did you pay either amounts to your</p> <p>11 employees?</p> <p>12 A. They would always get paid what's supposed</p> <p>13 to be.</p> <p>14 Q. Here's Plaintiffs' Exhibit 27. These are</p> <p>15 the documents that I believe you were saying you</p> <p>16 produced in large stacks?</p> <p>17 A. Yes.</p> <p>18 Q. Do you see where it says "Rate" it says</p> <p>19 "7.50" and that's less than either for small or</p> <p>20 large employer in New York City according to</p> <p>21 Plaintiffs' Exhibit 26, and the document I handed</p> <p>22 you, Plaintiffs' 27, is Bates stamped 4437 to 4467,</p> <p>23 and it's for Cesar Romero. All of these checks are</p> <p>24 from 2017 when the minimum wage was, with a tip</p> <p>25 credit, 8.75 or 9.15.</p>	<p style="text-align: right;">Page 51</p> <p>1 E. D'ANGELO</p> <p>2 Q. Yes, you sent us a pile of receipts that</p> <p>3 were scanned in randomly and don't say what you are</p> <p>4 telling me now. We went over that the last</p> <p>5 deposition.</p> <p>6 A. No, we didn't talk about that. We didn't</p> <p>7 talk about that. When the machine broke, I would</p> <p>8 pay them daily in cash and do the checks according</p> <p>9 to the tips they would give me, and they would have</p> <p>10 to pay me the taxes.</p> <p>11 Q. So you didn't actually pay them the exact</p> <p>12 amount described on these documents, right?</p> <p>13 A. I have to see what I gave the lawyer and</p> <p>14 you.</p> <p>15 Q. But was it your practice to pay them what is</p> <p>16 described in these documents or was it to give them</p> <p>17 some other amount and this is just the records that</p> <p>18 you kept?</p> <p>19 A. Everything that was given to you from</p> <p>20 QuickBooks is what we give the government, and the</p> <p>21 checks that are done for them.</p> <p>22 Q. But these are not checks that they actually</p> <p>23 got right, you didn't write checks to the employees?</p> <p>24 A. Yes, I did checks and they signed if they</p> <p>25 received checks. They signed "Paid in cash, because</p>
<p style="text-align: right;">Page 50</p> <p>1 E. D'ANGELO</p> <p>2 A. They must have been paid more.</p> <p>3 Q. But that's not what your pay stubs say?</p> <p>4 A. I don't think it was the whole year we</p> <p>5 probably didn't notice about the raise in this time.</p> <p>6 Q. But this is everything you have produced</p> <p>7 from 2017 from Doll's for Cesar Romero. So at no</p> <p>8 point in 2017 was he paid the minimum wage?</p> <p>9 A. This is only until July.</p> <p>10 Q. That's all you produced.</p> <p>11 A. Because I think he only worked until July in</p> <p>12 Doll's.</p> <p>13 Q. Do you understand now that you paid him less</p> <p>14 than minimum wage?</p> <p>15 A. It says "Regular pay, 8.30."</p> <p>16 Q. Where does it say that?</p> <p>17 A. No, that's quantity, the amount of hours.</p> <p>18 It was -- my son was doing the checks and he must</p> <p>19 have gotten confused because for each one, you have</p> <p>20 to put the hour, but I would pay in cash daily, and</p> <p>21 I'm sure he was paid what was supposed to be paid.</p> <p>22 Q. But you don't have any records showing he</p> <p>23 was?</p> <p>24 A. I sent it to you, all those receipts that</p> <p>25 was paid cash.</p>	<p style="text-align: right;">Page 52</p> <p>1 E. D'ANGELO</p> <p>2 they were paid the same day they worked.</p> <p>3 Q. My question is did you actually write them</p> <p>4 out checks or did you pay in cash because these are</p> <p>5 all check stubs, right?</p> <p>6 A. Yes.</p> <p>7 Q. So which did you do, did you pay them cash</p> <p>8 or did you write checks to them?</p> <p>9 A. When they worked daily, they were paid cash</p> <p>10 that same day to the day they were supposed to work,</p> <p>11 then they had to do the tip cards, so I could do the</p> <p>12 check because their tip employees. The one that</p> <p>13 weren't tip employees, there was no problem. So I</p> <p>14 would do the check after and they would sign "Paid</p> <p>15 in cash," and they would pay my taxes. They</p> <p>16 wouldn't pay it at the time, the amount would be</p> <p>17 added and if someone wanted to pay at once, some</p> <p>18 others want today wait for their returns.</p> <p>19 Q. Please listen to my question. Did any of</p> <p>20 these Plaintiff's get paid by check or did they call</p> <p>21 get paid by cash?</p> <p>22 A. These were paid. I don't understand.</p> <p>23 Q. In front of you in Plaintiffs' 27, part of</p> <p>24 the pay stubs that you produced for Cesar Romero,</p> <p>25 did you actually issue checks to him or not?</p>

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<p style="text-align: right;">Page 53</p> <p>1 E. D'ANGELO</p> <p>2 A. Yes, these are their checks.</p> <p>3 Q. Where are the canceled checks?</p> <p>4 A. Where are the canceled checks?</p> <p>5 Q. Yes.</p> <p>6 A. These checks -- I think these checks are</p> <p>7 checks that were already paid to them so they would</p> <p>8 sign the back "Paid in cash," because I already paid</p> <p>9 them.</p> <p>10 Q. Do you know what a check is from a bank?</p> <p>11 A. Yes.</p> <p>12 Q. Did you write them a check from a bank or</p> <p>13 did you pay them cash?</p> <p>14 A. After the machine was damaged, they were</p> <p>15 paid cash.</p> <p>16 Q. So they were paid cash, not in a check,</p> <p>17 right?</p> <p>18 A. No, they were paid cash.</p> <p>19 Q. They were paid cash, not given a check; is</p> <p>20 that correct?</p> <p>21 A. Yes.</p> <p>22 Q. These documents we are looking at -- and you</p> <p>23 produced a lot of, say that there are check numbers</p> <p>24 associated with it, there are not actually checks</p> <p>25 associated with it, right?</p>	<p style="text-align: right;">Page 55</p> <p>1 E. D'ANGELO</p> <p>2 Q. The checks that you had them sign "Paid in</p> <p>3 cash."</p> <p>4 A. I have a lot of them.</p> <p>5 Q. Where? Do you have them with you? Give</p> <p>6 them to me?</p> <p>7 A. No, I have to look for them in the office.</p> <p>8 Q. Are you telling me that there are more</p> <p>9 documents in your office that you still have not</p> <p>10 produced that are important to this case?</p> <p>11 A. Those were checks that were paid in cash. I</p> <p>12 didn't consider it important. You didn't ask for</p> <p>13 them.</p> <p>14 Q. You are telling me that you have a record of</p> <p>15 what you paid your employees that they signed</p> <p>16 confirming that they got paid an amount and it's</p> <p>17 your claim that we never asked for that?</p> <p>18 A. No, you never said bring the checks. I told</p> <p>19 them the first deposition I explained how it was</p> <p>20 paid cash after the punch in machine was damaged.</p> <p>21 MR. ROSE: We are going to take a</p> <p>22 break.</p> <p>23 (Whereupon, a recess was taken at</p> <p>24 this time.)</p> <p>25 (Whereupon, an e-mail was marked as</p>
<p style="text-align: right;">Page 54</p> <p>1 E. D'ANGELO</p> <p>2 A. Yes, they would get a check and on the back</p> <p>3 of the check, they would put "Paid in cash."</p> <p>4 Q. You would write them a check and have them</p> <p>5 write "Paid in cash" on the back of it?</p> <p>6 A. Yes.</p> <p>7 Q. Did you produce any?</p> <p>8 A. I don't think so.</p> <p>9 Q. So it's your testimony that you wrote checks</p> <p>10 to all of the Plaintiff's and you also gave them</p> <p>11 cash?</p> <p>12 A. When I would make the check, because they</p> <p>13 were already paid, they would sign that they were</p> <p>14 already paid and the check was to declare taxes for</p> <p>15 the government, because I had to declare my taxes.</p> <p>16 Q. You are claiming that you printed out these</p> <p>17 checks and gave it to them?</p> <p>18 A. Yes, I would give it to them and say "Pay in</p> <p>19 cash," so they would owe me the tax that corresponds</p> <p>20 to them.</p> <p>21 Q. So that was the proof that they owed you</p> <p>22 tax?</p> <p>23 A. Yes.</p> <p>24 Q. Where are those documents?</p> <p>25 A. What documents?</p>	<p style="text-align: right;">Page 56</p> <p>1 E. D'ANGELO</p> <p>2 Plaintiffs' Exhibit 28 for identification,</p> <p>3 as of this date.)</p> <p>4 (Whereupon, order for case related</p> <p>5 documentation was marked as Plaintiffs'</p> <p>6 Exhibit 29 for identification, as of this</p> <p>7 date.)</p> <p>8 Q. Ma'am, I'm going to hand you what's been</p> <p>9 marked as Plaintiff's 28 and 29. Plaintiff's 28 is</p> <p>10 an e-mail I sent your attorney after the last</p> <p>11 deposition. Do you see Number 3, I asked for all</p> <p>12 schedules and for both Edita's and Doll's from 2011</p> <p>13 to 2018; do you have any of those?</p> <p>14 A. No, I told you I never keep a record of</p> <p>15 that.</p> <p>16 Q. Did you do a search to see if you had any?</p> <p>17 A. I haven't found any of that.</p> <p>18 Q. If you look at Number 2, do you see where it</p> <p>19 says "All records for all Plaintiff's and the Opt-In</p> <p>20 Plaintiff's including those which are kept in the</p> <p>21 QuickBooks records produced in your native format;"</p> <p>22 do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Did you produce all those records?</p> <p>25 A. All of QuickBooks, you have that.</p>

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<p style="text-align: right;">Page 57</p> <p>1 E. D'ANGELO</p> <p>2 Q. But right now you are identifying another</p> <p>3 set of records, checks that you are claim that our</p> <p>4 clients signed over to you; is that correct?</p> <p>5 A. They are not checks, they are my checks.</p> <p>6 The part that they are supposed to send to the bank,</p> <p>7 like I already paid, they would sign that they were</p> <p>8 already paid. You didn't ask for that, you asked</p> <p>9 for the checks.</p> <p>10 Q. I'm going to ask you look at 29, because in</p> <p>11 case you didn't understand "All records for all</p> <p>12 Plaintiff's and Opt-in Plaintiff's," we asked at the</p> <p>13 very beginning of this case, Number 6, it states</p> <p>14 "Any and all documents describing, detailing and/or</p> <p>15 accounting for the amount of money paid to</p> <p>16 Plaintiff's during the time of their employment;" do</p> <p>17 you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Did you produce all those records?</p> <p>20 A. I gave you all the checks. You have all the</p> <p>21 checks.</p> <p>22 Q. You are saying that you have a pile of</p> <p>23 checks in your office that you are claiming our</p> <p>24 client signed agreeing that they had received money,</p> <p>25 is that what you are testifying to today?</p>	<p style="text-align: right;">Page 59</p> <p>1 E. D'ANGELO</p> <p>2 of them. Those small slips on the checks, I can</p> <p>3 give them to you.</p> <p>4 Q. Are those small slips checks?</p> <p>5 A. The top part of the check. It's the check.</p> <p>6 Q. Are these checks, too?</p> <p>7 A. No, it's the copy of the QuickBooks. You</p> <p>8 asked for a copy of QuickBooks.</p> <p>9 Q. Ma'am, there's no question. Are there any</p> <p>10 records showing how much cash was given out to the</p> <p>11 employees at the end of their shifts other than what</p> <p>12 you produced?</p> <p>13 A. No, I don't think so.</p> <p>14 Q. Are there any of these checks that you are</p> <p>15 describing that are client signed in your office</p> <p>16 which you have not yet produced?</p> <p>17 A. You didn't ask for them. I didn't consider</p> <p>18 it necessary.</p> <p>19 Q. Do you they describe, detail and/or account</p> <p>20 for the amount of money paid to the plaintiffs?</p> <p>21 A. The signed check?</p> <p>22 Q. Yeah.</p> <p>23 A. The back that says "Paid in cash," the same</p> <p>24 check, you have the yellow copy.</p> <p>25 Q. Did you produce these or not?</p>
<p style="text-align: right;">Page 58</p> <p>1 E. D'ANGELO</p> <p>2 A. Yes.</p> <p>3 Q. And you have never produced them before; is</p> <p>4 that true? No, I don't want to hear why.</p> <p>5 A. I gave you the original.</p> <p>6 Q. The original what?</p> <p>7 A. The original check. I gave you all the</p> <p>8 checks.</p> <p>9 Q. Are you talking about Plaintiff's Exhibit</p> <p>10 27?</p> <p>11 A. Yes, all of that.</p> <p>12 Q. Do you think these are checks?</p> <p>13 A. These are copies of the check.</p> <p>14 Q. You think these are checks?</p> <p>15 A. That's the copy of how the checks come.</p> <p>16 Q. You think this is a check, what's in</p> <p>17 Plaintiff's Exhibit 27?</p> <p>18 A. That's a copy of QuickBooks.</p> <p>19 Q. The check that you are testifying our client</p> <p>20 signed, are they identical to what we are looking at</p> <p>21 in Plaintiff's Exhibit 27?</p> <p>22 A. No, before that, I sent the yellow ones.</p> <p>23 They are identical to the checks we give them.</p> <p>24 Q. But those are not checks either.</p> <p>25 A. It's the check and all this. I gave you all</p>	<p style="text-align: right;">Page 60</p> <p>1 E. D'ANGELO</p> <p>2 A. No, not that one. I didn't think it was</p> <p>3 necessary because I had the check. I produced the</p> <p>4 check. I didn't think those things were necessary.</p> <p>5 Q. Did you tell your lawyer about them?</p> <p>6 A. No. I told you they signed the first day --</p> <p>7 since the first day. Maybe the lawyer didn't</p> <p>8 understand me.</p> <p>9 MR. ROSE: We are going to call for</p> <p>10 the production of the checks that are</p> <p>11 signed. We are adjourning the deposition</p> <p>12 and we having sanctions against you for</p> <p>13 failure to engage in discovery process.</p> <p>14 (Time Noted: 12:40 p.m.)</p> <p>15</p> <p>16 EDITH D'ANGELO</p> <p>17</p> <p>18 Subscribed and sworn to before me</p> <p>19 this day of 2020.</p> <p>20</p> <p>21</p> <p>22 Notary Public</p> <p>23</p> <p>24</p> <p>25</p>

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C E R T I F I C A T E

1
2
3
4 I, JAMIE DESMOND, hereby certify that the
5 Examination Before Trial of EDITH D'ANGELO was held
6 before me on the 4th day of February, 2020; that
7 said witness was duly sworn before the commencement
8 of her testimony; that the testimony was taken
9 stenographically by myself and then transcribed by
10 myself; that the party was represented by counsel as
11 appears herein; that the within transcript is a true
12 record of the Examination Before Trial of said
13 witness;

14 That I am not connected by blood or
15 marriage with any of the parties; that I am not
16 interested directly or indirectly in the outcome of
17 this matter; that I am not in the employ of any of
18 the counsel.

19 IN WITNESS WHEREOF, I have hereunto set my
20 hand this 13th day of February, 2020.

21
22 
23 JAMIE DESMOND
24
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